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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No.

MORRIS BRAUER,

Petitioner,

v.

SUPREME COURT OF NEW JERSEY,

Respondent.

IN THE MATTER

of

MORRIS BRAUER,
An Attorney At Law.

BRIEF FOR RESPONDENT, SUPREME COURT OF NEW JERSEY, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinions Below

The opinion of the Supreme Court of New Jersey is reported in 48 N. J. 186 (1966) and is printed in the Petitioner's Appendix (hereinafter cited as Pet. App. A-1 to

A-21). The "report and findings of fact" of the master designated by the Supreme Court of New Jersey for hearing in this matter is unreported and is printed in Pet. App. B (A-22 to A-51).*

Jurisdiction

No federal constitutional questions were tendered in this action at any time prior to final judgment. Petitioner sought to raise such questions for the first time after judgment by a petition for rehearing. The Supreme Court of New Jersey denied the petition for rehearing, thus declining to accept the issues offered.

There is no foundation under the practice governing the courts in New Jersey for the distinction which the petitioner seeks to make between a denial of a petition for rehearing and a dismissal of such petition. A petition for rehearing is either granted, whereupon the matters offered are heard, or the petition is denied. Therefore, under the court below's practice, the constitutional arguments were not accepted or passed upon.

Additionally, Petitioner's eleventh hour efforts to project this disciplinary action into a constitutional dimension should be treated as illtimed. Petitioner was represented by eminent counsel (a former Attorney General of the State of New Jersey) at the hearing of the matter before

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* The Petition for Writ of Certiorari to the Supreme Court of New Jersey was received by the Clerk to that Court on April 21, 1967. The Clerk of the New Jersey Supreme Court, in accepting the Petitions filed with him, did not understand them to be service on the respondent in this cause until counsel for the Petitioner so advised the Clerk on or about May 26, 1967. Immediately thereafter, the Court advised the Attorney General's office of the pendency of the Petition. The New Jersey Supreme Court regrets the delay occasioned by this misunderstanding and extends its apologies therefor.

the Honorable James R. Giuliano at which time he had full and complete opportunity to crossexamine any witnesses confronting him as well as present testimony on his own behalf. Detailed findings of fact and conclusions of law were prepared by Judge Giuliano after the hearing of the matter. Briefs were filed on behalf of the Petitioner and the entire proceeding was reviewed by the Supreme Court of New Jersey.

As the opinion of the New Jersey Supreme Court indicates (Pet. App. A-5 to A-8), counsel for Mr. Krieger, another member of the bar who was also a respondent in the same proceeding, was critical of the nature of the hearing before Judge Giuliano. Although the court below could see no basis for a claim of misunderstanding, it offered Mr. Krieger an opportunity to reopen the hearing if he so desired. Mr. Krieger declined the offer. The petitioner, Mr. Brauer, and his counsel were present throughout the argument and during the colloquy just described, and neither made a like criticism nor did they request a further hearing.

Under these circumstances it is difficult to perceive how the Petitioner can now be permitted to raise constitutional issues for the first time when he has failed to present such issues in timely fashion up and through the oral argument before the Court below.

It is respectfully submitted that the jurisdictional requirements for *certiorari* in this Court are lacking in this case and that the Petition should be dismissed.

Questions Presented

1. Whether a Petition for Certiorari should be granted where constitutional questions are not timely raised in the State Court proceedings.

2. Whether a member of the bar in a disciplinary proceeding where he had a full hearing before a Judge of the Superior Court of New Jersey in a procedure substantially equivalent to that obtaining in a county ethics committee hearing was denied due process and equal protection of the laws in contravention of the 14th Amendment to the United States Constitution.

Constitutional Provisions and Statutes Involved

This case purportedly involves the due process and equal protection provisions of the 14th Amendment to the United States Constitution.

Statement of the Case

In view of the position taken herein; namely, that the federal constitutional issues were not timely raised in the State proceedings, there is no necessity to elaborate on the facts in this matter. They are, however, set forth in the opinion of the Supreme Court of New Jersey which is found in Pet. App. A-16 to A-20.

ARGUMENT

As permitted by the rules of this Court, argument relating to the jurisdiction of this Court is embraced under the jurisdictional point in this brief. Although the Respondent's position is that the jurisdictional basis for this Court to grant *certiorari* is absent in this case, it should not thereby be inferred that the Respondent considers the Petitioner to have been treated less than fairly in this serious matter. Notwithstanding Petitioner's rather speculative assertions in his Petition, it is submitted that the Petitioner herein was afforded a maximum of due process. Moreover, the Petitioner was not treated in a manner different from other

attorneys who have been subjected to the disciplinary procedures of the New Jersey Supreme Court. Disciplinary matters have been referred to a Judge acting as a master, rather than to an Ethics Committee, on other appropriate occasions. See *e.g. In re Mattera*, 34 N. J. 259 (1961); *In re Wittreich*, 5 N. J. 79 (1950) [The record shows that Mr. Justice Brennan, then a Judge of the New Jersey Superior Court, sat as a Master for the Court in the *Wittreich* matter].

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey,
Attorney for Respondent, Supreme Court of New Jersey.

ALAN B. HANDLER,
First Assistant Attorney General,
Of Counsel.

RICHARD NEWMAN,
Deputy Attorney General,
On the Brief.